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FILED

OCTOBER 19, 2005

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

JONATHAN H. LUSTGARTEN, M.D.

CONSENT ORDER

This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") upon the Board's receipt of a complaint from the mother of patient D.R. regarding surgery performed on April 16, 1996 by respondent Jonathan Lustgarten, M.D. Specifically, respondent performed a craniectomy upon then two-month old D.R., who suffered a brain infarct post-operatively and was left with severe neurological impairments following the surgery. Respondent appeared before a Preliminary Evaluation Committee of the Board on October 22, 2003, represented by Rudolph Socey, Jr., Esq., and then testified under oath concerning the surgery that he performed upon D.R. Respondent is presently represented by Thomas B. Layhane, Esq.

Upon review of information available to the Board, to include respondent's office records, hospital records and respondent's testimony before the Preliminary Evaluation Committee, the Board finds that respondent performed an extended vertex craniectomy on April 16, 1996 on two-month old D.R. for repair of a sagittal synostosis. The synostosis was initially diagnosed by respondent during a consultation which occurred when D.R. was hospitalized at two weeks of age in February 1996 for failure to thrive. Respondent saw D.R. in his office prior to scheduling the elective surgery, and respondent sent D.R. to

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a pediatric neurologist for a neurological consultation prior to surgery.

The Board found no indication in the patient record to suggest that the consulting neurologist in fact cleared D.R. for surgery or that respondent formally consulted with D.R.'s primary-care pediatrician prior to the surgery, although D.R. was seen by said pediatrician pre-operatively. Additionally, the Board found that respondent failed to ensure that a properly qualified operative team, to include an appropriately trained pediatric anaesthesiologist, would attend the procedure throughout the surgery. Finally, the Board expressed concern regarding respondent's decision to perform an elective craniectomy on a two month old infant, weighing less than ten pounds who had been hospitalized previously for failure to thrive, given the absence of any suggestion that the procedure needed to be performed emergently. During the procedure, a sagittal sinus tear occurred, and the infant sustained extensive blood loss, which led to hypovolemic shock with multiple end-organ complications, to include renal failure, multi-organ failures, seizures and severe neurologic injury.

The Board finds that respondent engaged in acts of negligence in this matter, and that cause for disciplinary action against respondent exists pursuant to N.J.S.A. 45:1-21(d). The parties desiring to resolve this matter without need for formal disciplinary proceedings, and the Board being satisfied that the need for such proceedings is obviated by the entry of the within Order, and being further satisfied that good cause exists to support entry of the within Order,

IT IS on this 19 day of OCT, 2005,

ORDERED AND AGREED:

Sep 29 2005 12:34 P.M.

ATTY GEN/DIV OF LAW Fax:973-

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1. Respondent Jonathan Lustgarten, M.D., is hereby reprimanded for having engaged in acts of negligence in connection with his performance of an extended vertex craniectomy upon patient D.R.

2. Respondent is assessed a civil penalty in the amount of \$5,000, which penalty shall be payable in full upon entry of this Order.

3. Respondent is assessed costs of investigation incurred by the Board in the amount of \$7,348.43, which cost assessment shall be payable in full upon entry of this Order.

NEW JERSEY STATE
BOARD OF MEDICAL EXAMINERS

By:


Bernard Robins, M.D.
Board President

I consent to the entry of this Order
by the State Board of Medical
Examiners.


Jonathan Lustgarten, M.D.